



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVE. S.W.,
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, D.C.

April 10, 2014

W. Burke Royster
Superintendent
Greenville County Schools
301 E. Camperdown Way
Greenville, South Carolina 29601

Re: OCR Complaint No. 11-12-1409
Letter of Findings

Dear Mr. Royster:

This letter is to inform you of the disposition of the May 29, 2012 complaint filed with the District of Columbia Office for Civil Rights (OCR), U.S. Department of Education (the Department). The Complainant filed the complaint on behalf of XXXX (the Student) against Greenville County Schools (the District), particularly XXXX (the School) alleging an inappropriate response to a sexual assault complaint. On March 26, 2014, the District signed a resolution agreement which, when fully implemented, will resolve the matters raised in the complaint. (See attached Resolution Agreement). Below, please find a summary of the specific complaint allegation investigated, OCR's responsibilities and applicable legal standards and a summary of our investigation and conclusions.

Complaint Allegation Investigated

Whether the District, particularly the School failed to promptly and appropriately respond to the Complainant's May 2012 notice, that a male student sexually harassed the Student at the School's May 2012 field day event.

OCR's Responsibilities and Procedures

OCR is responsible for enforcing Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity receiving Federal financial assistance from the U.S. Department of Education (the Department). Because the District is a recipient of Federal financial assistance from the Department, it is subject to the provisions of Title IX and its implementing regulation.

Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX.¹ Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the recipient's program.

In determining whether this denial or limitation has occurred, OCR examines all the relevant circumstances from an objective and subjective perspective, including: the type of harassment (e.g., whether it was verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved (e.g., teacher-student or student-student); the setting and context in which the harassment occurred; whether other incidents have occurred in the district; and other relevant factors. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. For example, a single instance of rape is sufficiently severe to create a hostile environment. It is the totality of the circumstances in which the behavior occurs that is critical in determining whether a hostile environment exists. Consequently, in using the factors discussed previously to evaluate incidents of alleged harassment, it is always important to use common sense and reasonable judgment in determining whether a hostile environment has been created.

If a school district knows or reasonably should have known about sexual harassment that creates a hostile environment, Title IX requires the district to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects. When responding to alleged sexual harassment, a district must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation reveals that discriminatory harassment has occurred, a district must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

The Title IX implementing regulation, at 34 C.F.R. §106.8(a), requires a school district to designate at least one person to coordinate its efforts to comply with and carry out its responsibilities under Title IX (the Title IX coordinator), and to notify all students and employees of the name or title, office address, and telephone number of the designated coordinator. A school district must ensure that the employee designated to serve as Title IX coordinator has adequate training on what constitutes sexual harassment, including sexual violence, and that he or she understands how the district's grievance procedures operate. The Title IX implementing regulation at 34 C.F.R. §106.8(b) requires a school district to adopt and publish grievance procedures providing for a prompt and equitable resolution of student and employee complaints alleging sex discrimination.

¹ The applicable legal standards described herein are more fully discussed in OCR's 2011 Dear Colleague Letter on Sexual Violence, which is available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html> (Apr. 4, 2011). See also OCR's 2010 Dear Colleague Letter on Harassment and Bullying, which is available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html> (Oct. 26, 2010); OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties at: <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html> (Jan. 19, 2001).

Pending the outcome of an investigation, Title IX requires a school district to take steps to protect the complainant from further harassment as necessary, including taking interim steps before the final outcome of the investigation. The school district should undertake these steps promptly once it has notice of a sexual harassment allegation. It should notify the complainant of his or her options to avoid contact with the alleged perpetrator. For instance, the school district may prohibit the alleged perpetrator from having contact with the complainant pending the results of the investigation. When taking steps to separate the complainant and the alleged perpetrator, a school district should minimize the burden on the complainant and thus should not, as a matter of course, remove the complainant from classes while allowing the alleged perpetrator to remain. In addition, school districts should ensure that complainants are aware of their Title IX rights and any available resources, such as counseling services, and, if appropriate, their right to file a complaint with local law enforcement.

In addition, if there is an incident involving potential criminal conduct, the school district must determine, consistent with state and local law, whether appropriate law enforcement or other authorities should be notified. But a school district's Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve a school district of its independent Title IX obligation to investigate the conduct. Although a school district may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, once notified that the police department has completed its gathering of evidence (not the ultimate outcome of the investigation or the filing of any charges), the school district must promptly resume and complete its fact-finding for the Title IX investigation. Moreover, the criminal investigation should not prevent a school district from notifying complainants of their Title IX rights and the school's grievance procedures, or from taking interim steps to ensure the safety and well-being of the complainant and the community while the law enforcement agency's fact-gathering is in progress. These duties are a school district's responsibility, regardless of whether a student has complained, asked the district to take action, or identified the harassment as a form of discrimination.

Background

<XXXX TWO PARAGRAPHS REDACTED XXXX>

OCR interviewed the Principal and the Title IX Coordinator. Both the Principal and the Title IX Coordinator informed OCR that that all investigations are conducted at the school site by school administrators. Principals handle all matters at the building level and make a recommendation after investigation. The principal then notifies the Superintendent and the Superintendent notifies the District's attorney. The SRO is involved when a criminal offense is committed. The Principal stated that, with regard to this complaint, he reviewed video tapes and spoke with both the Student and the male student. He also verbally informed the Complainant that the male student would not be at the School. He did not, however, send her a final letter of determination.

During the Principal's interview, he seemed unclear of the investigatory standards for the District's investigation of sexual harassment complaints. The District provided OCR with insufficient information to indicate that it documented the results of its investigation. Further,

the hearing officer², apart from indicating that his decision was based on “statements of others,” provided no information to indicate that a review of supporting documentation was conducted.

With regard to coordination of sexual harassment complaints, the Title IX Coordinator stated that any principal can call him for advice, if needed. He will give a principal assistance and guidance for the investigation; however, he is only involved with the investigation if the victim appeals the principal’s decision. The Title IX Coordinator stated that he was not aware of this complaint and thus was not involved with it since the Complainant did not appeal the Principal’s decision to him. OCR further reviewed the District’s sexual harassment policies and district-wide complaint data. The District’s policies and procedures were revised and addressed in OCR Complaint No. 11-11-1248. OCR confirmed that the Title IX Coordinator was unaware of many of the sexual harassment complaints.

Discussion

After reviewing all the investigative information provided by the Complainant and the District, OCR found that the District took immediate action when the Complainant notified it of the incident. School officials followed this requirement, suspending the student with the recommendation for expulsion. OCR does not have compliance concerns with the promptness of the School’s investigation of this incident, its determination of what occurred or the level of sanctions it imposed.

OCR identified two areas of noncompliance with Title IX. OCR found that the District’s Title IX Coordinator was not notified about this complaint and is only aware of other complaints if they are appealed; therefore, the Title IX Coordinator was not coordinating the District’s response to sex discrimination complaints. OCR also found that although the Principal spoke with the Complainant in person regarding the School’s investigative results, a final determination letter was not issued to the Complainant.

In addition to these compliance issues, OCR also identified some concerns regarding the District’s record-keeping regarding sexual harassment complaints. Apart from the letters recommending suspension and possible expulsion that it had sent to the male student’s parent, a partial statement from the male student and three photos from its security cameras, the District provided no other investigative documents regarding its investigation of the incident. OCR also observed that the District’s summary data reports regarding other sexual harassment and assault complaints appeared to be incomplete, in that some lacked information regarding any determination with regard to sanctions and stated the investigation was cancelled instead of completed. It was not clear to OCR whether the concerns regarding the summary information were due to individual school sites’ incomplete complaint files, or inaccurate data entry, or both.

A further concern was the general training District principals and administrators, including the Title IX Coordinator, received on sexual harassment. The District’s training provided general information regarding Title IX Athletics and sexual harassment. The following are a few examples of information that should have been included in the training: (1) that Title IX applies

² The hearing officer serves as the designee for the District’s Board of Trustees for expulsion cases.

to actions of teachers, staff, fellow students, and visitors on school premises but also protects students from sexual harassment in a school's academic programs, extracurricular, athletic and other programs, whether they take place in a school facility, on a school bus or at another location sponsored by the school, (2) the role of the Title IX Coordinator; and (3) the prohibition against retaliation.

This concludes OCR's investigation of this complaint. OCR will monitor the District's compliance with the Resolution Agreement. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please note that no person is permitted to intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces. If any individual is harassed or intimidated because of filing a complaint with or participating in any aspect of OCR case resolution, the individual may file a complaint alleging such treatment. Additionally, under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for the District's cooperation during the investigation of the complaint, particularly Attorney Doug Webb. If you should have any questions regarding this letter or its contents, please contact Selena Fox, OCR Senior Attorney, at (202) 453-5910 or, via e-mail, at Selena.Fox@ed.gov.

Sincerely,

/S/

Kay Bhagat
Team Leader, Team III
District of Columbia Office

Enclosure